

University of St. Thomas Law Journal

Volume 13

Issue 3 *Sanctuary Cities Symposium*

Article 1

2017

The Right to Remain in Safety: The Impact of Community Leadership on Philadelphia's ICE Holds Policy

Caitlin Barry

Bluebook Citation

Caitlin Barry, *The Right to Remain in Safety: The Impact of Community Leadership on Philadelphia's ICE Holds Policy*, 13 U. St. Thomas L.J. 459 (2017).

This Article is brought to you for free and open access by UST Research Online and the University of St. Thomas Law Journal. For more information, please contact lawjournal@stthomas.edu.

ARTICLE

THE RIGHT TO REMAIN IN SAFETY: THE IMPACT OF COMMUNITY LEADERSHIP ON PHILADELPHIA'S ICE HOLDS POLICY

CAITLIN BARRY*

I. INTRODUCTION

In the winter of 2014, in a closed meeting with officials from the administration of Philadelphia's Mayor Michael Nutter, a group of community organizers, lawyers, advocates, and foreign consulate staff sat around a conference table and debated whether the city should comply with hold requests used by the Immigration and Customs Enforcement (ICE). The Mayor's administration had recently proposed a policy that would limit the use of holds to those individuals who had been convicted of violent felonies. At the time, the proposed policy was one of the more expansive and relatively progressive restrictions on ICE holds in the country. Opinions from those seated at the table ranged from support and gratitude to frustration and anger that the Mayor would not consider a policy that would unilaterally end the use of ICE holds. Those in support of the policy expressed their dismay with those who refused to support it, and at the end of a heated conversation, there was no consensus on the best direction forward.

Following this meeting, leaders from Philadelphia's immigrant communities worked together to clarify their vision and the values that drove their approach to these local policy decisions. Organizers reached out to allies and advocates across the city to listen to their concerns and share their analysis and principles. Their tireless work resulted in a policy adopted by Mayor Nutter that prohibited the use of all ICE holds in Philadelphia.

* Assistant Professor of Law and Director of the Farmworker Legal Aid Clinic, Villanova University Charles Widger School of Law. My eternal gratitude to Mia-lia Kiernan, K. Naroen Chhin, Erika Almiron Niz, Jasmine Rivera, Miguel Andrade, Alison Sprague, Natasha Kelemen, Sundrop Carter, Nicole Kligerman, Blanca Pacheco, and Peter Pedimonti for their dedication, compassion and leadership. Many thanks to Philippe Harriman for research assistance.

Two years later, in the fall of 2015, the Mayor's administration again requested a closed-door meeting with stakeholders, this time to discuss the city's policy on communication with the Department of Homeland Security (DHS). Standing before the crowd, administration officials announced that the Mayor intended to provide DHS with identifying information and notifications of release from city custody for a small group of individuals who had been convicted of violent felonies. Administration staff focused their announcement on the severity of the offenses that would be enumerated and the fact that it would be a very small number of people who would be directly impacted by the policy. The officials explained that they had created this proposal after several months of meetings and discussion with DHS Secretary, Jeh Johnson, about the Priority Enforcement Program (PEP).

In contrast to the meeting two years prior, when the city administrators concluded their announcement, the audience erupted into expressions of frustration, ranging from concerns about the history of criminalization of immigrant communities and the growth of mass incarceration to the ongoing erosion of trust in local law enforcement. After a full hour of discussion, the Mayor's administration did not receive a single statement of support. The audience unanimously agreed that the policy would be destructive for Philadelphia's immigrant communities, with lawyers, advocates, and organizers all calling on Mayor Nutter not to take this step.

How did this collective response come to take place? How did Philadelphia's immigrant justice community arrive at a united front and refuse to accept any city policy that would lead to collaboration with DHS even for more limited programs like PEP?

This article will first give a brief overview of the recent history of federal programs to enhance DHS collaboration with local law enforcement in Philadelphia. I will then discuss how these programs were received by Philadelphia's advocacy community and how grassroots community leadership developed a commitment to fighting for policies that would protect all of Philadelphia's immigrant residents. I will conclude with an argument that this strong community leadership was crucial in achieving and maintaining Philadelphia's progressive policies.

II. BACKGROUND

To understand the framing of Philadelphia's 2014 policy on ICE holds, it is necessary to first explore Philadelphia's demographic makeup. Philadelphia is the fifth largest city in the country, and the majority of its residents are people of color, with 44% of the population identifying as black, 14% as Latino, and 7.4% as Asian in the most recent census.¹ A quarter of

1. *QuickFacts Philadelphia County Pennsylvania*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/table/PST045216/42101,4260000,42> (last visited Oct. 28, 2016).

Philadelphia's population live at or below the poverty line, and Philadelphia has the highest percentage of residents living in "deep poverty"—those surviving on less than half of the federal poverty rate—of any large city in the country.²

Philadelphia's immigrant populations have primarily migrated from Latin America and the Caribbean.³ Twelve percent of the city's residents were born outside the United States, and twenty-one percent speak another language at home.⁴ The most common countries of citizenship among those born outside the United States are India, Mexico, China, Vietnam, and the Dominican Republic.⁵

Like residents of other major cities, Philadelphia's communities of color, including immigrant communities, experience the harshest consequences of poverty and criminalization. A 2010 report found that fifty-one percent of Latino boys do not graduate from high school in Philadelphia.⁶ Since 2011, the city has operated under a settlement agreement to monitor its stop-and-frisk policy, after a 2010 class action lawsuit accused the Philadelphia police of disproportionately targeting black and Latino men.⁷ A 2009 report on the racial breakdown of Philadelphia's jails showed that only fourteen percent of the incarcerated population was white, when the city's population is forty-three percent white.⁸ Philadelphia has the highest per capita incarceration rate of the ten largest cities in the country.⁹ Three-quarters of the incarcerated population wait at least six months for trial, and Philadelphia's physical jail space has exceeded its own capacity for decades.¹⁰

In addition to disproportionate criminalization and incarceration by local law enforcement, Philadelphia's immigrant communities have also been targeted by the skyrocketing deportation enforcement of the last decade. Philadelphia was one of the first cities in the country to enroll in the federal Secure Communities program in 2008, which allowed deportation authori-

2. Alfred Lubano, *Among the 10 Largest Cities, Philadelphia Has Highest Deep-Poverty Rate*, PHILA. INQUIRER (Sept. 30, 2015, 1:08 AM), http://www.philly.com/philly/news/local/2015_0930_Among_the_10_largest_cities__Phila__has_highest_deep-poverty_rate.html.

3. *Immigrant Communities*, WELCOMING CTR. FOR NEW PENNSYLVANIANS, <http://welcomingcenter.org/our-work/> (last visited Oct. 28, 2016).

4. *Id.*

5. *Id.*

6. *African American and Latino Male Dropout Taskforce Final Report*, PHILA. PUB. SCH. NOTEBOOK (Sept. 2, 2010), <http://thenotebook.org/sites/default/files/TaskforceReport090110.pdf>.

7. Josh Saul, *America Has a Stop-and-Frisk Problem, Just Look at Philadelphia*, NEWSWEEK (May 18, 2016, 6:00 AM), <http://www.newsweek.com/2016/06/10/stop-and-frisk-philadelphia-crisis-reform-police-460951.html>.

8. *Philadelphia's Crowded, Costly Jails*, PEW CHARITABLE TR. 11 (May 17, 2010), http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/philadelphia_research_initiative/philadelphiascrowdedcostlyjailsrevpdf.pdf.

9. *See id.* at 8.

10. Maura Ewing, *A Reckoning in Philadelphia*, THE ATLANTIC (Mar. 3, 2016), <http://www.theatlantic.com/politics/archive/2016/03/a-reckoning-in-philadelphia/472092/>.

ties to access local arrest information.¹¹ ICE also paid over \$13,000 in 2009 to obtain a contract that provided access to the Preliminary Arrest Reporting System, the city's local arrest information database, which includes each individual's place of birth.¹²

ICE agents in Philadelphia, as in other cities, began to use their expanding relationships with local police as a dragnet for deportation. In 2008, a mother reported being asked for her identification by deportation authorities when she went to pick up her son at the police station, resulting in the initiation of deportation proceedings against her.¹³ After the start of the Secure Communities program in 2008, traffic stops across the city also began to result in deportation.¹⁴ A member of Philadelphia's Indonesian community explained the situation in 2010: "When you get pulled over by cops, if they think you're undocumented, they can apprehend you. . . . They see your complexion—dark skin—broken English. They can detain and interrogate you in the police station," leading to deportation.¹⁵

The increased resources available to ICE resulted in devastating consequences for individuals who were formerly incarcerated. The last revision of the federal immigration laws in 1996 dramatically expanded the list of crimes that could result in deportation and denied individuals with convictions from applying for most forms of relief from deportation.¹⁶ After the implementation of Secure Communities, ICE officers in Philadelphia began to use their increased resources and access to the criminal system to target individuals with old convictions, including members of Philadelphia's refugee communities. In 2010, several Cambodian men who came to the United States as refugees were arrested and incarcerated by deportation authorities for previous convictions. All of the men had been released from prison and returned home, and some had started families or businesses in their communities.¹⁷

At the heart of the deportation crisis in Philadelphia lay the use of detainers, or hold requests, by the local ICE office. Hold requests are notices provided to local law enforcement requesting that the agency, at its

11. See Michael Matza, *Protest against City Program that Advocates for Undocumented Say Can Result in Deportations*, PHILA. INQUIRER, Aug. 25, 2011, at B02.

12. See Tom Ferrick & Daniel Denvir, *Los Mexicanos de Filadelfia Part One: The Deportation Machine*, METROPOLIS (June 4, 2011, 9:45 PM), <http://www.phlmetropolis.com/2011/06/los-mexicanos-de-filadelfia-part-two-the-deportation-machine.php>.

13. Matza, *supra* note 11.

14. Aaron Kase, *Hiding in Plain Sight: S. Philly Indonesians Fear Deportation*, PHILA. WKLY., June 15, 2010, http://www.philadelphiaweekly.com/news/hiding-in-plain-sight-s-philly-indonesians-feardeportation/article_61e88357-f7cc-5ed0-b2ef-7f2629d8a642.html.

15. *Id.*

16. Dawn M. Johnson, *AEDPA and the IIRIRA: Treating Misdemeanors as Felonies for Immigration Purposes*, 27 J. LEGIS. 477, 477 (2001); see generally *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996) (codified as amended in scattered sections of 8 U.S.C.).

17. Michael Matza, *Rally: Let 4 Refugees Stay Here*, PHILA. INQUIRER, Jan. 18, 2011, at B01.

discretion, hold a person who has been arrested beyond the time at which they should be released to allow deportation authorities to take custody of the person.¹⁸ Holds are issued by deportation agents and are not based on any judicial review of evidence.¹⁹ According to data gathered by the Transactional Records Access Clearinghouse, Philadelphia's police and prison systems received over 2700 ICE hold requests between 2003 and 2013.²⁰

After the introduction of the Secure Communities program in Philadelphia, Philadelphia's immigrant community organizations began to collect stories from impacted community members and develop strategies to protect their neighbors. Community groups reached out to local politicians to attempt to shut the Secure Communities program down. The Pennsylvania Immigrant Citizenship Coalition (PICC), a network of immigrant justice advocates, created a Public Safety Committee to address immigration enforcement issues in local neighborhoods, and Victim Witness Services of South Philadelphia (VWSSP), a local victims' advocacy agency, regularly held meetings to share the experiences of immigrant survivors of crime in seeking police protection.²¹ The New Sanctuary Movement of Philadelphia (NSM) and Juntos, a Latino human rights organization, began a campaign to revoke ICE's contract that granted access to the city's arrest database.²² These organizations held rallies and protests at city hall and the office of the District Attorney, who sits on the committee that administers the contracts.²³ This campaign culminated in a community forum in 2010 calling for an end to police collaboration with deportation authorities.²⁴ The campaign was not successful in ending the contract in 2010, although the city did commit to shielding names and identifying information of victims from the information that would be provided to ICE.²⁵ As a result of these cam-

18. *Galarza v. Szalczyk*, 745 F.3d 634, 643 (3d Cir. 2014) ("Even if there were any doubt about whether immigration detainers are requests and not mandatory orders to local law enforcement officials, settled constitutional law clearly establishes that they must be deemed requests.").

19. *See Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1004–05 (N.D. Ill. 2016) (discussing the lack of any individualized review before ICE holds are issued).

20. *Tracking Immigration and Customs Enforcement Detainers*, TRANSACTIONAL REC. ACCESS CLEARINGHOUSE, <http://trac.syr.edu/phptools/immigration/detain/>.

21. Philadelphia Family Unity Network, *History of Organizing Against Detainers*, May 26, 2014 (on file with author).

22. Michael Matza, *Philadelphia Will Share Arrest Data with Immigration Officials, with a Change*, PHILA. INQUIRER, July 17, 2010, at B01.

23. Steven Clark, *Philly Mayor Wants to Block Immigration Officials Full Access to Arrest Records*, FOX NEWS (July 3, 2010), <http://www.foxnews.com/politics/2010/07/03/philly-mayor-seeks-support-end-access-immigration-agents-city-arrest-records.html>.

24. Michael Matza, *Philadelphia to Bar Immigration Agents from Arrest Data*, PHILA. INQUIRER, June 28, 2010, at B01.

25. *See Emma Jacobs, Philly's Children of Undocumented Workers Take Letters to Mayor*, NBC10 (Aug. 29, 2013, 6:20 PM), <http://www.nbcphiladelphia.com/news/local/Immigrant-Children-Undocumented-Parents-Philadelphia-ICE-221676071.html>.

paigns, the relationship between ICE and local police came under increasing scrutiny from the media and local politicians.²⁶

At the same time, a new organization formed to support the Cambodian refugees who had been detained by ICE that year. 1Love Movement responded to the crisis of deportation in the Cambodian community by organizing support for the families of detainees, holding community education sessions, and drawing media attention to the situation of Cambodian refugees with criminal records.²⁷ 1Love Movement, Juntos, New Sanctuary Movement, PICC, and VWSSP frequently worked together to bring attention to the consequences of deportation in Philadelphia's communities.

One of their first local accomplishments was to work with the Philadelphia City Council in 2011 to write and sign a resolution calling on the Mayor's administration to cease the city's participation in the Secure Communities program. This resolution stated, "All residents of Philadelphia have the right to remain in their neighborhoods with their communities and their families, regardless of their economic status, their immigration status or their criminal history."²⁸ This victory set the stage for a united effort to address ICE holds.

III. THE 2014 CAMPAIGN TO END ICE HOLDS

A. *The Mayor Opens the Door to Limited Enforcement*

By 2013, organizers and advocates across the country had brought significant attention to the destructive consequences of ICE's expanded access to the criminal system. Several studies showed that encouraging local police to work with deportation authorities significantly increased racial profiling of immigrants, particularly Latino residents.²⁹ Legal advocates also raised concerns about the constitutionality of detainers, which are not based on probable cause and have not been reviewed by a judge.³⁰ In 2010, the Pennsylvania American Civil Liberties Union (ACLU) sued local police in Lehigh County for holding a United States citizen in jail for three days based

26. See Matza, *supra* note 22.

27. See Sarah Hoye, *Federal Deportation Review Comes Too Late for Some*, CNN (Sept. 1, 2011, 8:38 AM), <http://www.cnn.com/2011/US/09/01/philadelphia.cambodia.deportation/>.

28. Phila. City Council Res. 110536, PHILA. CITY COUNCIL LEG. INFO. CTR. (June 23, 2011), <http://legislation.phila.gov/attachments/11804.pdf>.

29. Ralph De La Cruz, *Report: Secure Communities Encourages Racial Profiling, Lack of Due Process*, FLA. CTR. FOR INVESTIGATIVE REP'G (Oct. 20, 2011), <http://fcir.org/2011/10/20/report-secure-communities-encourages-racial-profiling-lack-of-due-process/>; cf. Aarti Kohli et al., *Secure Communities By The Numbers: An Analysis Of Demographics And Due Process*, CHIEF JUST. EARL WARREN INST. ON L. AND SOC. POL'Y (Oct. 2011), https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

30. See, e.g., Michael Kagan, *Immigration Law's Looming Fourth Amendment Problem*, 104 GEO. L.J. 125 (2015).

on an ICE hold issued by the federal office in Philadelphia, and in 2013, the case was still working its way through the federal courts.³¹

The cost of ICE holds also became a cause for concern for budget-strapped cities, as these holds required cities to pay for the extended incarceration of their residents and for city employee time to arrange transfers between city facilities and deportation authorities. Between 2013 and 2014, the state of California paid an estimated \$65 million to use ICE holds, with the city of Los Angeles alone spending \$26 million.³² The state of Texas estimated that between 2011 and 2014, the state spent over \$200 million on incarcerating individuals subject to ICE holds.³³ As these concerns mounted, several cities reconsidered their relationships with ICE and began to curtail the agency's access to city and county criminal systems.³⁴

Philadelphia's mayor at the time, Michael Nutter, created a new office to focus on immigration issues across the city, the Mayor's Office of Immigrant and Multicultural Affairs (MOIMA).³⁵ In the spring of 2013, MOIMA's staff reached out to several local community organizations, including Juntos and the New Sanctuary Movement, and invited them to a meeting to discuss Philadelphia's use of ICE holds. The city presented a proposed policy that would limit the use of ICE holds by ceasing enforcement of holds against individuals accused of low-level offenses, which was consistent with policies that other cities were introducing at the time.³⁶ The organizations convened their own meeting with other community organizations, including 1Love Movement and PICC, to discuss their perspective on the Mayor's proposal.

31. *ACLU-PA Files Suit on Behalf of US Citizen Illegally Detained By ICE for Three Days*, AM. CIV. LIBERTIES UNION (Dec. 1, 2010), <https://www.aclu.org/news/aclu-pa-files-suit-behalf-us-citizen-illegally-detained-ice-three-days>.

32. *The Cost of State and Local Involvement in Immigration Enforcement*, CATH. LEGAL IMMIGR. NETWORK (June 2014), https://cliniclegal.org/sites/default/files/cost_of_involvement_in_immigration_enforcement_version_5_mm.pdf; Jorge Rivas, *Report: Deportation Program Costs L.A. County More Than \$26 Million*, COLORLINES (Aug. 23, 2012, 4:44 PM), <http://www.colorlines.com/articles/report-deportation-program-costs-la-county-more-26-million>.

33. Dan Hill, *The Cost of Jailing Undocumented Immigrants*, TEX. TRIB. (July 21, 2014), <https://www.texastribune.org/2014/03/04/cost-of-jailing-undocumented-immigrants/>.

34. See, e.g., Brent Begin, *San Francisco County jail won't hold inmates for ICE*, S.F. EXAMINER (May 6, 2011), <http://archives.sfexaminer.com/sanfrancisco/san-francisco-county-jail-wont-hold-inmates-for-ice/content?oid=2174504>; Mihir Zaveri, *D.C. Council votes to limit reach of federal effort aimed at illegal immigration*, WASH. POST (June 5, 2012), https://www.washingtonpost.com/local/dc-council-votes-to-limit-reach-of-federal-effort-aimed-at-illegal-immigration/2012/06/05/gJQAVgm5GV_story.html?utm_term=.21bff9987702.

35. *Mayor Nutter Signs Executive Order, Establishes Mayor's Office of Immigrant and Multi-Cultural Affairs*, CITY OF PHILA. (Mar. 11, 2013), <https://cityofphiladelphia.wordpress.com/2013/03/11/mayor-nutter-signs-executive-order-establishes-mayors-office-of-immigrant-and-multi-cultural-affairs-2/>.

36. See, e.g., Paloma Esquivel, *Santa Clara County to stop honoring immigration detainers for low-level offenders*, L.A. TIMES (Oct. 18, 2011, 3:37 PM), <http://latimesblogs.latimes.com/lanow/2011/10/santa-clara-county-to-stop-honoring-immigration-detainers-for-low-level-offenders.html>; Zaveri, *supra* note 34.

B. Community Leadership Responds

After learning of the Mayor's proposal, the New Sanctuary Movement of Philadelphia, Juntos, PICC, VWSSP, and ILove Movement held several meetings to discuss the impact of ICE holds in Philadelphia. The organizations decided that their resources could best be leveraged to achieve a new policy by working in unison, and the Philadelphia Family Unity Network (PFUN) was born.³⁷

The members of the new coalition studied campaigns to end ICE holds in other cities, which tended to focus on the innocence of the individuals subjected to deportation.³⁸ Critics of ICE holds frequently pointed to the number of individuals turned over to DHS despite having no criminal history as an example of the inherent flaws in the program.³⁹ In 2013, during the discussion of a proposal to place limits on ICE holds according to the severity of the person's criminal history in King County, Washington, a member of the King County Council stated, "I support detaining dangerous people, which we continue to do with this legislation."⁴⁰ This approach to ICE holds was reflected by the initial messaging from Philadelphia's administration as well. When interviewed about ICE holds in the summer of 2013, the Deputy Mayor for Public Safety stated that the city needed to use ICE holds to remove "dangerous individuals" from the city.⁴¹

PFUN's membership included both a victim's advocacy organization working with survivors of violence and an organization working alongside

37. See *Philadelphia Family Unity Network (PFUN) Forms*, NEW SANCTUARY MOVEMENT OF PHILA. (June 11, 2013), <http://sanctuaryphiladelphia.org/philadelphia-family-unity-network-pfun-coalition-forms/>.

38. See generally Press Release, *Council to Prevent Unnecessary Deportations*, N.Y. CITY COUNCIL (Feb. 27, 2013), <http://council.nyc.gov/press/2013/02/27/555/> ("The stated mission of the federal government's activities in New York City is the deportation of criminal aliens who pose a threat to public safety. In reality, however, immigrants without criminal records and those who are not a risk to society are being deported, needlessly damaging communities and families.").

39. See, e.g., *Secure Communities*, AM. IMMIGR. COUNCIL (Nov. 29, 2011), <https://www.americanimmigrationcouncil.org/research/secure-communities-fact-sheet> ("[T]he program has not focused exclusively on convicted criminals, dangerous and violent offenders, or threats to public safety and national security."); Tamar Hallerman, *Under 'Secure Communities,' All Fingerprints Would Go In Database*, DURANGO HERALD, (Aug. 20, 2010, 2:44 AM), <https://durangoherald.com/articles/13327-under-145-secure-communities-8217-all-fingerprints-would-go-in-database> ("We question how (ICE is) setting their priorities," said Michelle Waslin, senior policy analyst at the Washington-based Immigration Policy Center, which is against Secure Communities. "Are they truly focusing on the most dangerous criminals, or are they also picking up people who have not been convicted of any or a relatively minor crime?"). For an extended critique of a narrative focused on innocence in immigration policy, see generally Rebecca Sharpless, *"Immigrants Are Not Criminals": Respectability, Immigration Reform, and Hyperincarceration*, 53 HOUS. L. REV. 691 (2016).

40. Emily Heffter, *County: No More Immigration Holds for Low-Level Offenders*, SEATTLE TIMES (Dec. 3, 2013, 7:24 AM), <http://www.seattletimes.com/seattle-news/county-no-more-immigration-holds-for-low-level-offenders/>.

41. Jacobs, *supra* note 25.

refugees with criminal convictions, many of which involved violent offenses. These different perspectives raised difficult but unavoidable questions: Is deportation an appropriate consequence for someone who commits a violent act? Would deporting that person make our communities safer? Should a person lose the right to remain in her community if she makes a serious mistake?⁴²

To guide their work, PFUN spent several months forming agreements on the values that would inform their response to any policy proposal, focusing on establishing a leadership model that prioritized directly impacted community members and creating an approach that would not exclude the communities represented by any individual organization. After years of organizing to respond to the consequences of deportation in their communities, the coalition members agreed that a campaign to end ICE holds must be value-driven and not simply reactive.⁴³ The coalition created a set of “core principles” that would drive their work:

We honor and prioritize the leadership of immigrants, refugees and survivors of institutional, structural and interpersonal violence. We believe in people’s abilities to self-determine their own identities, paths and communities, to make mistakes and start over, and to be their own best advocates. We support each other in resisting identities and labels that divide our communities such as race, class, age, gender, criminal vs. non-criminal, immigration status, sexuality, and religion. We do not condone any stigmatizing or shaming of those who are not deemed to be “deserving” of justice and redemption by a system that our communities did not create.⁴⁴

Rather than enter the conversation under the premise that they must agree to continue to subject some community members to ICE holds, PFUN shifted the conversation to question why any member of Philadelphia’s immigrant communities should be excluded from the right to remain in their communities. As an organization working primarily with people who were formerly incarcerated, ILove Movement brought the perspective of people who had served time in prison and were fighting to remain in their homes, including people who had been convicted of felony offenses, such as crimes of violence. PFUN recognized that any policy that used criminal history as the sole test for whether a person deserved to face deportation would exclude members of the coalition.

42. See Waleed Shahid, *How Community Organizers Fought Deportation in Philadelphia and Won*, NEWSWORKS (May 20, 2014), <http://www.newsworks.org/index.php/local/essayworks/67980-how-community-organizers-fought-deportation-in-philadelphia-and-won> (“PFUN’s community organizing not only generated one of the most progressive immigration policies in the country; it also highlights rapidly changing perceptions of crime and the roots of violence.”).

43. Philadelphia Family Unit Network, *supra* note 21.

44. Philadelphia Family Unity Network, *Philadelphia Family Unity Network Core Principles*, May 29, 2015 (on file with author).

The coalition agreed at the outset of the ICE holds negotiation that they would not support a policy that enforced ICE holds against any immigrant, regardless of criminal history. Coalition members drafted their own proposed policy that would stem the expansion of ICE's activities with local law enforcement by (1) ending ICE holds; (2) prohibiting ICE agents from physically accessing individuals in city custody; (3) prohibiting city employees, including law enforcement, from asking individuals about their immigration status; and (4) ensuring community participation in the creation and implementation of any policies regarding ICE access to the Philadelphia criminal system.⁴⁵ PFUN presented this policy to city officials, who informed the coalition that the city was drafting its own policy, but had not yet settled on a final version.

In the following months, PFUN members organized public events to raise awareness about the consequences of ICE holds in their communities. The New Sanctuary Movement held a forty-day fast to draw attention to the issue of deportation, and Juntos members held a peaceful protest blocking the entrance to the ICE facility in Philadelphia.⁴⁶ PFUN reached out to members of Philadelphia's City Council and organized meetings with members of Juntos and NSM who could talk to their representatives about the impact of ICE holds. During these meetings, members of City Council offered to hold a public hearing on ICE holds, which had never been addressed in a public city forum. PFUN welcomed the opportunity to amplify their values, and scheduled a hearing in March 2014.

In January 2014, the Mayor's office invited organizations and individuals they viewed as stakeholders to a closed-door meeting to discuss the ICE holds policy. The meeting included staff from immigration legal service providers, foreign consulates, immigrant integration agencies, as well as community-based organizations.⁴⁷ At the meeting, members of the Mayor's administration presented a new policy that would further limit the use of ICE holds to cases of individuals who had been convicted of serious felony offenses. The meeting quickly became contentious, as members of PFUN attempted to explain why enforcing any ICE hold would violate that person's right to remain in the community.⁴⁸ Other stakeholders welcomed the Mayor's offer and pushed PFUN members to accept the Mayor's propo-

45. *Philadelphia Family Unity Network Fact Sheet*, PA. IMMIGR. AND CITIZENSHIP COAL., <http://paimmigrant.org/sites/default/files/PFUN%20Fact%20Sheet.pdf> (last visited Oct. 28, 2016).

46. *Imagine 2050, Immigrants, Allies Begin 40 Day Fast to End Police/ICE Collaboration*, ALTERNET (July 1, 2013, 11:26 AM), <http://www.alternet.org/immigration/immigrants-allies-begin-40-day-fast-end-mass-deportations-and-policeice-collaboration>; Daniel Hunter, *How Philly's Immigrants Ended ICE Holds*, WAGING NONVIOLENCE (Apr. 25, 2014), <http://wagingnonviolence.org/feature/phillys-immigrants-ended-ice-holds/>.

47. See Shahid, *supra* note 42.

48. *See Mayor Concedes to Weak Policy, Coalition Rejects the Concession*, NEW SANCTUARY MOVEMENT OF PHILA. (Jan. 5, 2014), <http://sanctuaryphiladelphia.org/mayor-concedes-to-weak-policy-we-reject-the-concession/>.

sal. PFUN continued to advocate according their core values and refused to accept the city's justification that some ICE holds were necessary.⁴⁹ The meeting concluded without consensus as to the best path forward.

Following the contentious meeting, PFUN's members continued to reach out to other stakeholders and members of the City Council to discuss the values that drove their policy goals. Armed with their core principles and unified vision, they invited advocates to join them in pushing for a policy that would protect all residents of Philadelphia.⁵⁰ Leading up to the City Council hearing in March, PFUN invited speakers from across Philadelphia's communities impacted by ICE holds to share their voices, including domestic violence advocates, faith leaders, high school students, lawyers, and most importantly, families who had experienced the loss of a family member through deportation as a consequence of an ICE hold.

On March 4, 2014, one week before the City Council hearing, the Third Circuit Court of Appeals issued its decision in *Galarza v. Szalczyk*, the case brought by the Pennsylvania ACLU against Lehigh County for enforcing an ICE hold against a U.S. citizen. The Court found for Mr. Galarza, and held that the County was liable for choosing to hold someone based on a voluntary ICE hold request. The Court held that local law enforcement agencies are "free to disregard" ICE hold requests, which are not supported by judicial warrants, and if they choose to enforce the detainer, they may be liable if the request is revealed to be based on erroneous information.⁵¹ The *Galarza* decision followed several others across the country that held local law enforcement liable for enforcing ICE holds, and gave important fuel to PFUN's campaign to convince the city to reject ICE holds.⁵²

On the day of the City Council hearing, dozens of organizations and individuals presented testimony unanimously urging the city to end the use of all ICE holds. A speaker from the Council on American-Islamic Relations testified: "Mayor Nutter has recently recognized the need to limit this practice. But a policy that permits such detention under limited circumstances such as felony charges does not solve the problems posed by ICE detainees."⁵³ Testimony presented on behalf of Congreso de Latinos Unidos, an agency providing domestic violence services to Philadelphia's Latino communities, spoke to the consequences of ICE holds for victims of domestic abuse: "Many of our clients want to give the person who abused

49. See Shahid, *supra* note 42.

50. *City Council Visits to Win Support*, NEW SANCTUARY MOVEMENT OF PHILA. (Feb. 1, 2014), <http://sanctuaryphiladelphia.org/visiting-all-members-of-city-council/>.

51. *Galarza v. Szalczyk*, 745 F.3d 634, 643 (3d Cir. 2014).

52. See, e.g., *Liranzo v. United States*, 690 F.3d 78, 82 (2d Cir. 2012); *United States v. Uribe-Rios*, 558 F.3d 347, 350 n.1 (4th Cir. 2009).

53. Council on American-Islamic Relations, *Testimony*, PA. IMMIGR. AND CITIZENSHIP COAL. (Mar. 12, 2014), http://www.paimmigrant.org/sites/default/files/CAIR-Philadelphia%20Testimony_0.pdf.

them a chance to rehabilitate themselves, but by using ICE holds, the city is forcing victims to choose between seeking protection and having their family member permanently deported from this country.”⁵⁴ A young student member of Juntos and the Philadelphia Student Union educated members of City Council on the connections between deportation and student safety:

For my community, the school to prison pipeline is also the school to deportation pipeline. Once the police get involved in a young person’s life, that information is shared with ICE, and arrests lead to deportation. Everybody makes mistakes but they also need second chances. The way the system is set up students are just being funneled into prisons, and for undocumented youth we are getting deported and losing our chance to turn our lives around.⁵⁵

The testimony presented at the City Council hearing revealed a wide range of reasons for opposing ICE holds, from the constitutional issues with warrantless detention, to the needs of survivors of violence, to the experiences of families who lost loved ones to deportation following a criminal arrest.

Following the City Council hearing, the Mayor’s administration announced that it would adopt a new policy which would require a judicial warrant to enforce any ICE hold in Philadelphia.⁵⁶ As ICE cannot obtain a judicial warrant to support civil ICE holds, the policy ended the use of all ICE holds in Philadelphia. ILove Movement summarized the victory on their blog:

We were able to stand together in unity in the face of social and political divisions that pressure us to throw each other under the bus. The deportation system we’re up against has set its own labels for us to determine who is deserving and who is not. They call us “skilled” or “unskilled”, “documented” or “undocumented”, “educated” or “uneducated”, “criminal” or “non-criminal”. The fact that we refuse to be divided, and instead stand with each other as people and families deserving of dignity, respect and justice – period – is victory in itself. We are united and unwavering in our commitment to this movement for the human rights of ALL of our communities, and in this particular moment that means ending all ICE Holds.⁵⁷

54. Congreso de Latinos Unidos, *Testimony*, PA. IMMIGR. AND CITIZENSHIP COAL. (Mar. 12, 2014), http://www.paimmigrant.org/sites/default/files/Caroline%20Campbell_0.pdf.

55. Karla Rojas, *Testimony*, PA. IMMIGR. AND CITIZENSHIP COAL. (Mar. 12, 2014), <http://www.paimmigrant.org/sites/default/files/Karla%20Rojas.pdf>.

56. See Exec. Order No. 1-14, *Policy Regarding U.S. Immigration and Customs Enforcement Agency Detainer Request*, CITY OF PHILA. (signed by Mayor Nutter on Apr. 16, 2014), <http://www.phila.gov/ExecutiveOrders/Executive%20Orders/EO%201-14.pdf>.

57. *PFUN Rocks!*, ILOVE MOVEMENT (Mar. 14, 2014), <https://ilovemovement.wordpress.com/2014/03/>.

IV. THE LEGACY OF PHILADELPHIA'S ICE HOLDS CAMPAIGN

Following the change in Philadelphia, counties across the state rolled back their ICE holds policies, resulting in nearly half the counties in the state refusing to enforce ICE holds.⁵⁸ Beyond the policy changes, the campaign to end ICE holds in Philadelphia fundamentally shifted the conversation about local immigration policy by demonstrating that strong community leadership could achieve transformative results. Not only did community organizers obtain a stronger policy, but they also shifted the distribution of power and ensured that leadership from impacted communities would have a voice in future policy conversations.

In the fall of 2015, Mayor Nutter's administration again convened a group of stakeholders to discuss the city's participation in ICE enforcement programs. The Obama administration had announced an end to the Secure Communities program with a new replacement, the PEP,⁵⁹ and federal officials were putting pressure on Philadelphia to adopt it.⁶⁰ In the meeting with local advocates, the Mayor's administration proposed an amendment to the ICE holds policy that would instruct law enforcement to notify ICE when a person was being released from the Philadelphia criminal system if the person has been suspected of terrorism or gang membership or convicted of a first degree felony.⁶¹ In contrast to the meeting with stakeholders held two years prior, this limited policy was met with unanimous resistance.⁶²

At the time of the meeting, former City Council member Jim Kenney had been elected as Philadelphia's new Mayor and was awaiting his inauguration.⁶³ As a member of City Council, Kenney had been a strong supporter of PFUN and the ICE holds campaign and had led the hearing in City Council with his own statements about the experiences of his Irish ancestors.⁶⁴ When asked about Mayor's Nutter's intention to revise the city's

58. See *Pennsylvania Counties Reevaluate Policies on Immigration Detainers*, SELLER CTR. FOR SOC. JUST. (Mar. 2015), <http://www2.law.temple.edu/cs/j/files/a-changing-landscape.pdf>.

59. See *generally Priority Enforcement Program*, IMMIGR. AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/sites/default/files/documents/Document/2015/pep-overview.pdf> (last visited Oct. 28, 2016) (providing an overview of the Priority Enforcement Program and how its detainer process differs from that of Secure Communities).

60. See Mensah Dean, *Mayor Nutter and U.S. Homeland Security Chief to Meet Today*, PHILA. DAILY NEWS (Apr. 15, 2015, 3:01 AM), http://www.philly.com/philly/news/politics/20150415_Mayor_Nutter_and_U_S_Homeland_Security_chief_to_meet_today.html.

61. Chris Brennan, *Nutter Reverses City Rules on Detained Immigrants*, PHILA. DAILY NEWS (Sept. 23, 2015, 1:08 AM), http://www.philly.com/philly/news/politics/20151223_Nutter_reverses_city_rules_on_detained_immigrants.html.

62. Pat Loeb, *Mayor Considers Adjusting Position On Immigration Enforcement, Alarming Activists*, CBS PHILLY (Nov. 17, 2015, 2:39 PM), <http://philadelphia.cbslocal.com/2015/11/17/mayor-considers-adjusting-position-on-immigration-enforcement-alarming-activists/>.

63. Brennan, *supra* note 61.

64. See AL DÍA News Media, *Anti-immigrant testifiers at Philly ICE hearing*, YOUTUBE (Mar. 12, 2014), <https://www.youtube.com/watch?v=fAySodSmYjQ>.

ICE holds policy, Kenney stated that he would continue the policy of prohibiting ICE holds once in office.⁶⁵

Several weeks before Kenney was sworn in as Mayor, outgoing Mayor Nutter revised the city's policy on ICE holds, stating that "Now, I understand that some might argue that any change in our 2014 Executive Order is a step backward, but I don't think they are accurate. . . . It is a way for us to provide information in the form of notification regarding people who have been convicted of very serious crimes and who are in our custody."⁶⁶ On Mayor Kenney's first day in office, he overturned Mayor Nutter's last minute revisions and reinstated the original ICE holds policy.⁶⁷

During his campaign for Mayor, Kenney had announced that if DHS wanted Philadelphia's policies to change, he would invite them to meet with local organizers to discuss their perspective. Kenney's position demonstrated that Philadelphia's immigrant community leadership would now have a voice in setting local policy. After Kenney took office, DHS Secretary Jeh Johnson did visit Philadelphia, and the members of PFUN were invited by the Mayor's office to join the meeting. Following the meeting, Mayor Kenney announced that he had no intention of making changes to Philadelphia's policy.⁶⁸

V. CONCLUSION

The campaign to end ICE holds in Philadelphia brought together advocates and organizers from diverse communities and perspectives, including advocates for survivors and formerly incarcerated community leaders. The campaign raised difficult questions about leadership, safety, and the impact of detention and incarceration on Philadelphia's communities, and opened opportunities to consider whose safety the hold requests actually protected. As a city with a population that is primarily people of color and is largely poor, the context in which ICE attempted to gain access to the criminal system to detain immigrants could not be ignored. The campaign leaders developed a unified message in demanding the end of all ICE holds that centered the consequences of incarceration on Philadelphia's immigrant communities. By placing the voices of community leaders at the center of a

65. Michael Matza, *Nutter Considers Rolling Back Philadelphia's "Sanctuary" Program*, PHILA. INQUIRER, (Nov. 13, 2015, 1:08 AM), http://www.philly.com/philly/news/local/20151113_Nutter_considers_rolling_back_Philadelphia_s_sanctuary_city_status_program.html.

66. Press Release, *Mayor Nutter Updates Executive Order on ICE Detainers and Notification Requests*, CITY OF PHILA. (Dec. 22, 2015), <https://cityofphiladelphia.wordpress.com/2015/12/22/mayor-nutter-updates-executive-order-on-ice-detainers-and-notification-requests/>.

67. Brian Hickey, *Kenney reverses Nutter's 'sanctuary city' reversal*, PHILLYVOICE (Jan. 4, 2016), <http://www.phillyvoice.com/kenney-reverses-nutters-sanctuary-city-reversal/>.

68. Michael Matza, *Kenney Rejects U.S. Request to Reverse Sanctuary City Status*, PHILA. INQUIRER (May 4, 2016, 1:08 AM), http://www.philly.com/philly/news/20160504_Kenney_rejects_Homeland_Security_s_request_to_reverse_Philadelphia_s_sanctuary_city_status.html.

value-driven campaign, PFUN was successful in changing local policy, in shifting power dynamics for future policy decisions, and in reframing the conversation about deportation in Philadelphia.